

**REQUEST  
for  
CONTINUED EXAMINATION (RCE)  
TRANSMITTAL**

*Subsection (b) of 35 U.S.C. § 132, effective on May 29, 2000,  
provided for continued examination of a utility or plant application  
filed on or after June 8, 1995.*

*See the American Inventors Protection Act of 1999 (AIPA).*

Application Number	09/910,854
Filing Date	July 24, 2001
First Named Inventor	Isao NAKATANI et al.
Group Art Unit	1765
Examiner Name	L. Umez-Eronini
Attorney Docket Number	2001-1048A
Confirmation No.	4033

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.

**NOTE:** 37 C.F.R. § 1.114 is effective on May 29, 2000. If the above-identified application was filed prior to May 29, 2000, applicant may wish to consider filing a continued prosecution application (CPA) under 37 C.F.R. § 1.53(d) (PTO/SB/29) instead of a RCE to be eligible for the patent term adjustment provisions of the AIPA. See *Changes to Application Examination and Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47 (Apr. 11, 2000), which established RCE practice.*

1. Submission required under 37 C.F.R. § 1.114

a. ☐ Previously submitted:

- i. ☐ Please enter and consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on
- ii. ☐ Please consider the arguments in the Appeal Brief or Reply Brief previously filed on
- iii. ☐ Other

b. ☒ Enclosed:

- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is required under 37 C.F.R. § 1.103(c) for a period of months.  
(period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required).

- b. ☒ Other Petition for Extension (\$2,160.00)

3. Fees (The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.)

- a. ☐ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No.

- i. ☐ RCE fee required under 37 C.F.R. § 1.17(e)
- ii. ☐ Extension of time fee (37 C.F.R. § 1.136 and § 1.17)
- iii. ☐ Other

- b. ☒ Check in the amount of \$2,950.00 enclosed

4. CORRESPONDENCE ADDRESS

CUSTOMER NO.  
**000513**

By 

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August 31, 2005

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THE COMMISSIONER IS AUTHORIZED  
TO CHARGE ANY DEFICIENCY IN THE  
FEE FOR THIS PAPER TO DEPOSIT  
ACCOUNT NO. 23-0975.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Mail Stop RCE**  
Isao NAKATANI et al. : Docket No. 2001-1048A  
Serial No. 09/910,854 : Group Art Unit 1765  
Filed July 24, 2001 : Examiner L. Umez-Eronini  
MASKING MATERIAL  
FOR DRY ETCHING : **Confirmation No. 4033**

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**RESPONSE TO OFFICE ACTION**  
**AS SUBMISSION REQUIRED UNDER 37 CFR 1.114**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

THE COMMISSIONER IS AUTHORIZED  
TO CHARGE ANY DEFICIENCY IN THE  
FEE FOR THIS PAPER TO DEPOSIT  
ACCOUNT NO. 23-0975.

Sir:

In the Office Action mailed July 30, 2004, the Examiner rejects claims 36-39 (the only claims under consideration) under 35 U.S.C. §102(b) as being anticipated by Eger (US 3,642,548). This rejection is respectfully traversed.

The Examiner takes the position that Eger teaches a masking layer comprising a metal such as hafnium, zirconium, tungsten or tantalum which reads on a masking material and wherein the masking material is respectively tantalum, tungsten, zirconium, and hafnium, as set forth in claims 36-39 of the present application.

However, although Eger does disclose that these metals can be used to form a metal masking layer, the reference fails to disclose that the masking material is in contact with an etching gas which is a mixed gas of carbon monoxide and a nitrogenous compound, as required by the presently claimed invention. That is, each of claims 36-39 refers to "a mixed gas of carbon monoxide and a nitrogenous compound as etching gas", and further requires that "the masking material (tantalum, tungsten, zirconium and hafnium) . . . is in contact with the etching gas.

In this regard, Eger indicates that the metal masking layer is chemically easily etchable (column 1, lines 62-63), and can be chemically etched in a known manner (column 2, lines 74-75) utilizing a phototechnique (column 3, line 1). There is no disclosure or suggestion in this reference of contacting the metal masking layer with the etching gas of the present invention, i.e. a mixed gas of carbon monoxide and a nitrogenous compound.

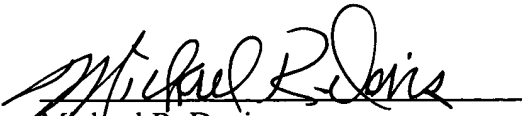
In the last paragraph on page 3 of the Office Action, the Examiner appears to indicate that no patentable weight is given to the expression "is in contact with the etching gas" in each of claims 36-39, which the Examiner apparently indicates shows intended use. However, to the contrary, each of the claims states that the masking material is in contact with the etching gas. This is not merely a statement of intended use, but is a requirement of the presently claimed invention, namely, that there **is contact** between the masking material and the etching gas, as Applicants have already noted at page 9, lines 4-5 of their Amendment filed May 21, 2004.

In discussing the Eger reference, the Examiner also refers to Harkin's masking material. However, the rejection is under 35 U.S.C. §102(b) as being anticipated by Eger. For anticipation under 35 U.S.C. §102, the reference must teach every aspect of the claimed invention either explicitly or impliedly, and any feature not directly taught must be inherently present (MPEP 706.02, section IV). Since the rejection is for anticipation, the Examiner's reliance on the Harkin reference is inappropriate.

For these reasons, Applicants take the position that the rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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